

OGC/LEGL Review Completed.

STAT

**Page Denied**

Next 32 Page(s) In Document Denied

98TH CONGRESS  
2D SESSION

# H. R. 4620

To prohibit the recording of conversation made on the Federal telecommunications system, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 1984

Mr. BROOKS introduced the following bill; which was referred jointly to the Committees on Government Operations and Post Office and Civil Service

---

## A BILL

To prohibit the recording of conversation made on the Federal telecommunications system, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the "Federal Telecommunica-  
4       tions Privacy Act of 1984".

5       SEC. 2. Title I of the Federal Property and Administra-  
6       tive Services Act of 1949 is amended by adding at the end  
7       thereof the following new section:

1           "RECORDING OF CONVERSATIONS ON FEDERAL  
2                           TELECOMMUNICATIONS SYSTEM

3           "SEC. 113. (a)(1) Except as provided in subsections (b),  
4 (c), and (d), no Federal officer or employee shall cause or  
5 permit the recording of, or listening-in upon, any conversa-  
6 tion conducted on the Federal telecommunications system es-  
7 tablished under section 7 of the Act of June 14, 1946 (40  
8 U.S.C. 295), or made available under section 110 of this Act.

9           "(2) Except as provided in subsections (b), (c), and (d),  
10 no Federal officer or employee shall cause or permit the re-  
11 cording of, or listening-in upon, any conversation conducted  
12 on any other telecommunications system if the conversation  
13 (A) is between a Federal officer or employee and any other  
14 person and (B) involves the conduct of Government business.

15           "(b) Without the consent of any party to a conversation,  
16 the recording of, or listening-in upon, such conversation may  
17 be conducted notwithstanding subsection (a) if such recording  
18 or listening-in is authorized under, and conducted in accord-  
19 ance with the requirements of, the Omnibus Crime Control  
20 and Safe Streets Act of 1968 (18 U.S.C. 2510 et seq.) or the  
21 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
22 1801 et seq.).

23           "(c) With the consent of one party to a conversation, the  
24 recording of, or listening-in upon, such conversation may be  
25 conducted notwithstanding subsection (a) if the recording or

1 listening-in is performed in accordance with the following  
2 conditions:

3       “(1) The recording or listening-in is performed for  
4 law enforcement purposes in accordance with proce-  
5 dures established by the agency head, as required by  
6 the Attorney General’s guidelines for the administra-  
7 tion of the Omnibus Crime Control and Safe Streets  
8 Act of 1968, and in accordance with procedures estab-  
9 lished by the Attorney General.

10       “(2) The recording or listening-in is performed for  
11 counterintelligence purposes and approved by the At-  
12 torney General or the Attorney General’s designee.

13       “(3) The recording or listening-in is performed by  
14 any Federal employee for public safety purposes and  
15 documented by a written determination of the agency  
16 head or the designee that cites the public safety needs  
17 and identifies the segment of the public needing protec-  
18 tion and cites examples of the hurt, injury, danger, or  
19 risks from which the public is to be protected.

20       “(4) The recording or listening-in is performed by  
21 a handicapped employee, provided a physician has cer-  
22 tified (and the head of the agency or designee concurs)  
23 that the employee is physically handicapped and the  
24 head of the agency or designee determines that the use  
25 of a listening-in or recording device is required to fully

1 perform the duties of the official position description.  
2 Equipment shall be for the exclusive use of the handi-  
3 capped employee. The records of any interceptions by  
4 handicapped employees shall be used, safeguarded, and  
5 destroyed (notwithstanding subsection (h) of this sec-  
6 tion) in accordance with appropriate agency records  
7 management and disposition systems.

8       “(5) The recording or listening-in is performed by  
9 any Federal agency for service monitoring but only  
10 after analysis of alternatives and a determination by  
11 the agency head or the agency head's designee that  
12 monitoring is required to effectively perform the agency  
13 mission. Strict controls shall be established and ad-  
14 hered to for this type of monitoring.

15       “(d) With the consent of all the parties to a conversa-  
16 tion, the recording of, or listening-in upon, such conversation  
17 may be conducted notwithstanding subsection (a). This in-  
18 cludes telephone conferences, secretarial recording, and other  
19 acceptable administrative practices. Strict supervisory con-  
20 trols shall be maintained to eliminate any possible abuse of  
21 this privilege. The agency head or the agency head's desig-  
22 nee shall be informed of this capability for listening-in or re-  
23 cording telephone conversations.

24       “(e)(1) Each agency shall ensure that—

5

1       “(A) all listening-in or recording of telephone con-  
2       versations pursuant to paragraph (3), (4), or (5) of sub-  
3       section (c) shall have a written determination approved  
4       by the agency head or the agency head’s designee  
5       before operations; and

6       “(B) service personnel who monitor listening-in or  
7       recording devices shall be designated in writing pursu-  
8       ant to paragraph (5) of subsection (c) and shall be pro-  
9       vided with written policies covering telephone conver-  
10      sation monitoring which shall contain at a minimum  
11      the following instructions:

12           “(i) no telephone call shall be monitored  
13           unless the Federal agency has taken continuous  
14           positive action to inform the callers of the moni-  
15           toring;

16           “(ii) no data identifying the caller shall be re-  
17           corded by the monitoring party;

18           “(iii) the number of calls to be monitored  
19           shall be kept to the minimum necessary to com-  
20           pose a statistically valid sample;

21           “(iv) agencies using telephone instruments  
22           that are subject to being monitored shall conspicu-  
23           ously label them with a statement to that effect;  
24           and

1           “(v) since no identifying data of the calling  
2           party will be recorded, information obtained by  
3           the monitoring shall not be used against the call-  
4           ing party.

5           “(2) Current copies and subsequent changes of agency  
6           documentation, determinations, policies, and procedures sup-  
7           porting operations pursuant to paragraph (3), (4), or (5) of  
8           subsection (c) shall be forwarded before the operational date  
9           to the General Services Administration. Specific telephones  
10          shall be identified in the documentation or determination to  
11          prevent any possible abuse of the authority.

12          “(3) Procedures for monitoring performed under para-  
13          graph (1) of subsection (c) shall contain at a minimum—

14               “(A) the identity of an agency official who is au-  
15               thorized to approve the actions in advance;

16               “(B) an emergency procedure for use when ad-  
17               vance approval is not possible;

18               “(C) adequate documentation on all actions taken;

19               “(D) records administration and dissemination pro-  
20               cedures; and

21               “(E) reporting requirements.

22          “(4) Requests to the General Services Administration  
23          for acquisition approval or installation of telephone listening-  
24          in or recording devices shall be accompanied by a determina-  
25          tion as defined in subsection (j)(2).

1       “(5) Each agency shall ensure that a program is estab-  
2 lished to reevaluate at least every two years the need for  
3 each determination authorizing listening-in or recording of  
4 telephone conversations under this section.

5       “(f)(1) The General Services Administration shall be ac-  
6 countable for information concerning the use of listening-in or  
7 recording of telephone conversations in the Federal Govern-  
8 ment as requested under paragraphs (3), (4), and (5) of sub-  
9 section (c).

10       “(2) The General Services Administration shall periodi-  
11 cally review the listening-in programs within the agencies to  
12 ensure that agencies are complying with Federal property  
13 management regulations.

14       “(3) The General Services Administration shall provide  
15 assistance to agencies in determining what communications  
16 devices and practices fall within the listening-in or recording  
17 category. The General Services Administration shall also  
18 provide guidance and assistance in the development of admin-  
19 istrative alternatives to the listening-in or recording of tele-  
20 phone conversations.

21       “(4) The General Services Administration shall take ap-  
22 propriate steps to obtain compliance with this Act if an  
23 agency has not documented its devices in accordance with  
24 this section.



1       “(g) For purposes of section 552a of title 5, United  
2 States Code, any recording or transcription of a conversation  
3 made under (or in violation of) this Act shall be deemed to be  
4 a record in a system of records (as such terms are defined in  
5 subsection (a) (4) and (5) of such section) which pertains to  
6 each party to such conversation, and each such party shall  
7 have all the rights and remedies afforded to an individual  
8 under such section.

9       “(h) Any recording or transcript of a conversation made  
10 under (or in violation of) this Act shall constitute a record  
11 deposited in a public office for purposes of section 2071 of  
12 title 18, United States Code.

13       “(i) The functions and responsibilities of the General  
14 Services Administration and of agency heads and agency  
15 heads’ designees under this section shall not be delegated or  
16 assigned.

17       “(j) For purposes of this section—

18               “(1) the term ‘Federal officer or employee’ in-  
19 cludes any officer or employee of any contractor, advi-  
20 sory committee, or consultant of an agency;

21               “(2) the term ‘determination’ means a written  
22 document (usually a letter) that specifies the operation-  
23 al need for listening-in or recording of telephone con-  
24 versations, indicates the specific system and location  
25 where it is to be performed, lists the number of tele-

9

1 phones and recorders involved, establishes operating  
2 times and a specific expiration date, and justifies the  
3 use, and is signed by the agency head or the agency  
4 head's designee;

5 "(3) the term 'agency head's designee' means only  
6 the individual designated pursuant to section 3506(b) of  
7 title 44, United States Code."

○